

FILED
IN CLERK'S OFFICE
2010 AUG -5 P 1:53
U.S.
DISTRICT COURT
DISTRICT OF NEW JERSEY

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE BANK OF AMERICA HAMP
LITIGATION

MDL Docket No.

**PLAINTIFFS ISAAC AND MARLEN MIKHAIL'S MOTION FOR TRANSFER AND
CONSOLIDATION OF RELATED ACTIONS PURSUANT TO 28 U.S.C. § 1407**

Plaintiffs Isaac and Marlen Mikhail ("the *Mikhail* Plaintiffs") respectfully move the Judicial Panel on Multidistrict Litigation (the "Panel") for an Order, pursuant to 28 U.S.C. § 1407, that: (i) transfers all putative class actions against Bank of America¹ that center on Bank of America's failure to satisfy agreements to modify home-mortgage loans (the "Bank of America HAMP Actions") currently pending in the United States District Courts, as well as any cases that may subsequently be filed asserting similar or related claims, to the United States District Court for the District of New Jersey (alternatively, the Central District of California, which is proximate to witnesses and documents, or the Western District of Washington, where the most procedurally advanced action is pending, are also appropriate transferee forums); and

¹ We refer collectively hereto to defendants Bank of America N.A. and BAC Home Loans Servicing LP as "Bank of America."

(ii) consolidates all such proceedings. In support thereof and for the reasons more fully set forth in the accompanying Memorandum, the *Mikhail* Plaintiffs state as follows:

1. Currently pending are eight federal putative class actions against Bank of America that center on Bank of America and BAC Home Loans Servicing LP's failure to satisfy agreements to modify home-mortgage loans through the Home Affordable Modification Program ("HAMP"):

Case name	Case no.	District Court	Date Filed	Status
<i>Mikhail v. Bank of America, N.A.; BAC Home Loans Servicing LP</i>	2:2010-cv-03630	NJ	July 19, 2010	Complaint filed; no responsive pleading
<i>Johnson v. BAC Home Loans Servicing, LP, a subsidiary of Bank of America N.A.</i>	1:2010-cv-10316	MA	February 23, 2010	Motion to Dismiss Filed; Response Filed
<i>Kahlo et al v. Bank of America NA; BAC Home Loans Servicing LP</i>	2:2010-cv-00488	W.D. WA	March 22, 2010	Motion to Dismiss fully submitted; Initial Disclosures and Planning Conference completed
<i>Soper v. Bank of America NA; BAC Home Loans Servicing LP</i>	2:10-cv-01194	W.D. WA	July 22, 2010	Complaint filed; no responsive pleading
<i>Brewer et al v. Bank of America, N.A.; BAC Home Loans Servicing LP</i>	3:2010-cv-01884	N.D. CA	April 30, 2010	Complaint filed; Motion to Dismiss filed on June 30, 2010
<i>Follmer, et al v. Bank of America, N.A.; BAC Home Loans Servicing LP</i>	2:2010-cv-01435	AZ	July 7, 2010	Complaint filed; no responsive pleading
<i>Matthews v. BAC Home Loans Servicing LP; Bank of America N.A.</i>	2:10-cv-05506	C.D. CA	July 26, 2010	Complaint filed; no responsive pleading
<i>Haber v Bank of America N.A.; BAC Home Loans Servicing, L.P.</i>	2:10-cv-03524	E.D. PA	July 19, 2010	Complaint filed; no responsive pleading

The *Mikhail* Plaintiffs believe that additional actions seeking class status will likely be filed in additional states.

Several other individual actions pending in federal courts around the country allege that Bank of America and BAC Home Loans Servicing LP breached contracts to modify each individual plaintiff's mortgage loan in the course of administering temporary loan modifications through the HAMP. The *Mikhail* Plaintiffs are aware of the following individual actions alleging similar claims to the ones they have raised:

- *Chugg v. BAC Home Loans Servicing LP, et al*; 2:2010-cv-00332 (W.D. Wash.), removed to federal court on February 26, 2010 (originally filed in state court on February 3, 2010).
- *Flicher et al v. BAC Home Loan Servicing, LP et al*; 2:2010-cv-01902 (E.D. La.), filed on July 6, 2010.
- *Moldenhauer v. BAC Home Loan Servicing LP; Bank of America, N.A. et al*; 2:2010-cv-00544 (E.D. Wis.), filed on June 30, 2010.
- *Mangura v. BAC Home Loans Servicing, L.P.*, 1:2010-cv-11008 (D. Mass.), removed to federal court on June 16, 2010 (originally filed in state court on May 25, 2010).
- *Zubaidi v. Countrywide Home Loans Servicing, LP n/k/a BAC Home Loans Servicing, LP*, 2:2009-cv-01070 (S.D. W. Va.), filed on October 1, 2009.
- *Smith v. BAC Home Loans Servicing, LP et al*, 2:2010-cv-00354 (S.D. W. Va.), filed on March 18, 2010.

2. These cases should be centralized and coordinated pursuant to 28 U.S.C. § 1407 because they are substantially identical, are being pursued against the same Defendants, and challenge the same scheme. Plaintiffs in all cases allege that Bank of America fails to live up to its obligations to modify mortgages on behalf of homeowners and ask the Court to enforce contracts into which Bank of America entered with individual Plaintiffs. All the complaints also allege that Bank of America entered into a contract to participate in a federal program to assist homeowners at risk of defaulting on their mortgages. This contract, known as a Servicer

Participation Agreement, incorporates written HAMP directives, and obligates Bank of America to perform loan-modification services to benefit certain eligible homeowners. Several cases allege that Bank of America breached its Servicer Participation Agreement and that certain eligible homeowners have the right to enforce the agreement as its intended beneficiaries.

3. The HAMP cases share many issues of fact and law that merits consolidation. Evidence common to all the HAMP cases will show that Bank of America's failure to provide permanent loan modifications in these circumstances amounts to a breach of contract and/or a breach of the covenant of good faith and fair dealing, and that Bank of America breached contractual duties under HAMP that were intended to benefit Class members.

4. Because all of the HAMP cases challenge the same misconduct by the same defendants, "[c]entralization under Section 1407 is necessary to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary." *See In re Cardiac Devices Qui Tam Litig.*, 254 F. Supp. 2d 1370, 1372 (J.P.M.L. 2003).

5. Moreover, these cases should be transferred to the United States District Court for New Jersey. While no single district provides the single geographic focal point for this entire litigation, the District of New Jersey is an appropriate forum because witnesses central to all plaintiffs' claims are located within or reasonably close to that district.

6. Alternatively, the Central District of California is also an appropriate forum for the same reasons, including that Defendant BAC Home Loans Servicing is headquartered in the Los Angeles area. BAC Home Loans Servicing is Defendants' functioning arm in extending

loan modifications that are the subject of these actions, in processing and storing documents, and in receiving and crediting modified loan payments.

7. Finally, the Western District of Washington would also be appropriate as the court with the most procedurally advanced proceeding for consolidation and the largest number of pending cases.

WHEREFORE, the *Mikhail* Plaintiffs respectfully request that the Panel grant their petition to coordinate and centralize all Bank of America HAMP Actions (as well as any cases that may subsequently be filed asserting related or similar claims) under 28 U.S.C. § 1407 and transfer them the District Court for the District of New Jersey. Alternatively, the Central District of California or the Western District of Washington are appropriate transferee forums.

Dated: August 3, 2010

Respectfully submitted,

BOLOGNESE & ASSOCIATES, LLC

By: /s/ Anthony J. Bolognese

Anthony J. Bolognese

Joshua H. Grabar

Jonathan M. Stemerman

Two Penn Center

1500 John F. Kennedy Blvd., Ste. 320

Philadelphia, PA 19102

Tel: (215) 814-6750

Fax: (215) 814-6764

Email: abolognese@bolognese-law.com

Email: jgrabar@bolognese-law.com

Email: jstemerman@bolognese-law.com

Lisa Rodriguez, Esquire
TRUJILLO RODRÍGUEZ & RICHARDS, LLC
258 Kings Highway East,
Haddonfield, NJ 08033
Tel: 856-795-9002
Fax: 856-795-9887
Email: lrodriguez@trrlaw.com

Attorneys for Plaintiffs Isaac and Marlen Mikhail